

ESTTA Tracking number: **ESTTA494954**

Filing date: **09/17/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054201
Party	Defendant Sleep Innovations, Inc.
Correspondence Address	ROBERT W SMITH MCCARTER ENGLISH LLP FOUR GATEWAY CENTER, 100 MULBERRY STREET NEWARK, NJ 07102 UNITED STATES rsmith@mccarter.com, ihurtado@mccarter.com, dpopovic@mccarter.com
Submission	Other Motions/Papers
Filer's Name	Robert W. Smith
Filer's e-mail	rsmith@mccarter.com, ihurtado@mccarter.com, dpopovic@mccarter.com
Signature	/robert w. smith/
Date	09/17/2012
Attachments	Exhibits E to I to Declaration of Robert W. Smith.pdf (24 pages)(478316 bytes)

EXHIBIT E

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32, and 50

United States Patent and Trademark Office

Reg. No. 2,534,745

Registered Jan. 29, 2002

**TRADEMARK
PRINCIPAL REGISTER**



PRODUCTS UNLIMITED, INC. (NEBRASKA
CORPORATION)
915 NORTH 20TH STREET
OMAHA, NE 68102

FIRST USE 8-1-1999; IN COMMERCE 12-1-1999.

SN 75-893,753, FILED 1-10-2000.

FOR: PILLOWS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25,
32 AND 50).

STEPHANIE DAVIS, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,874,474

Registered Nov. 9, 2010

Int. Cl.: 20

TRADEMARK

PRINCIPAL REGISTER

INTERSELL VENTURES LLC (NEW YORK LIMITED LIABILITY COMPANY)
SUITE 820
60 EAST 42ND STREET
NEW YORK, NY 10165

FOR: PILLOWS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 6-10-2009; IN COMMERCE 6-10-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SIDE SLEEPER", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A GRAPHIC OF A PERSON'S HEAD RESTING ON A PILLOW FOLLOWED BY THE WORDING "SIDESLEEPER PRO", WHERE THE WORD "PRO" APPEARS BELOW "SIDESLEEPER" AND IS ENCLOSED IN A SHADED RECTANGLE.

SN 77-782,587, FILED 7-16-2009.

ALYSSA STEEL, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32, and 50

United States Patent and Trademark Office

Reg. No. 3,102,320

Registered June 6, 2006

**TRADEMARK
PRINCIPAL REGISTER**



LATEX FOAM INTERNATIONAL HOLDINGS,
INC. (CONNECTICUT CORPORATION)
510 RIVER ROAD
SHELTON, CT 064840848

FIRST USE 3-1-2005; IN COMMERCE 3-1-2005.

SN 78-603,936, FILED 4-7-2005.

FOR: MATTRESSES, PILLOWS, AND MATTRESS
TOPPERS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32
AND 50).

STEVEN PEREZ, EXAMINING ATTORNEY

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 3,580,330

Registered Feb. 24, 2009

TRADEMARK
PRINCIPAL REGISTER



BROWN, BERNARD L (SOUTH AFRICA INDIVIDUAL)
14000 NOEL RD, STE. 622
DALLAS, TX 75240

FOR: BACK SUPPORT CUSHIONS NOT FOR MEDICAL PURPOSES, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 8-15-2005; IN COMMERCE 8-15-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POSTURE", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORD "POSTUREPAL" IN BLACK WITH A RECLINING MAN IN ABSTRACT IN BLUE, THE RECLINING MAN POSITIONED OVER THE WORD "POSTUREPAL" WITH HIS HEAD RESTING ON THE FIRST LETTER "P". THE WORD "POSTURE" IS IN GAUDY BOLD FONT WHEREAS THE WORD "PAL" IS IN REGULAR FONT SIZE, IN ITALICS.

SER. NO. 77-528,893, FILED 7-22-2008.

TRACY WHITTAKER-BROWN, EXAMINING ATTORNEY

Int. Cls.: 20 and 24

Prior U.S. Cls.: 2, 13, 22, 25, 32, 42 and 50

United States Patent and Trademark Office

Reg. No. 3,452,298

Registered June 24, 2008

**TRADEMARK
PRINCIPAL REGISTER**



FREDMAN BROS. FURNITURE COMPANY,
INC. (ILLINOIS CORPORATION)
8226 LACKLAND
ST. LOUIS, MO 63114

FOR: MATTRESSES, PILLOWS, ADJUSTABLE
SOFA BEDS, ADJUSTABLE BEDS, BED RAILS,
BED FRAMES, FURNITURE PARTS, NAMELY,
CENTER SUPPORTS, LINK SPRINGS, POP-UP
UNITS AND HARDWARE FOR ATTACHING A
METAL BED FRAME TO A HEADBOARD SOLD
AS A KIT, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND
50).

FIRST USE 8-31-2006; IN COMMERCE 8-31-2006.

FOR: MATTRESS PADS, IN CLASS 24 (U.S. CLS. 42
AND 50).

FIRST USE 8-31-2006; IN COMMERCE 8-31-2006.

THE MARK CONSISTS OF A PARTIAL OUTLINE
OF A BODY.

SER. NO. 77-174,740, FILED 5-7-2007.

THEODORE MCBRIDE, EXAMINING ATTORNEY

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

Reg. No. 2,891,423

United States Patent and Trademark Office

Registered Oct. 5, 2004

**TRADEMARK
PRINCIPAL REGISTER**



THE SPRING AIR COMPANY (ILLINOIS COR-
PORATION)
1111 NICHOLAS BOULEVARD
ELK GROVE VILLAGE, IL 60007

FIRST USE 8-0-2003; IN COMMERCE 8-0-2003.

SER. NO. 78-316,317, FILED 10-21-2003.

FOR: MATTRESSES AND BOX SPRINGS, IN
CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

AMY ALFIERI, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,795,910

Registered June 1, 2010

Int. Cl.: 20

TRADEMARK

PRINCIPAL REGISTER

ASHLEY FURNITURE INDUSTRIES, INC. (WISCONSIN CORPORATION)
ONE ASHLEY WAY
ARCADIA, WI 54612

FOR: MATTRESSES, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 1-13-2009; IN COMMERCE 1-13-2009.

OWNER OF U.S. REG. NOS. 1,600,879, 3,342,492, AND OTHERS.

THE MARK CONSISTS OF A STYLIZED LETTER "A" FOLLOWED BY THE WORDING "ASHLEY-SLEEP" BELOW A HIGHLY STYLIZED STICK FIGURE OF AN INDIVIDUAL LAYING DOWN.

SN 76-694,456, FILED 11-24-2008.

RAUL CORDOVA, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

Int. Cl.: 24

Prior U.S. Cls.: 42 and 50

United States Patent and Trademark Office

Reg. No. 2,805,327

Registered Jan. 13, 2004

**TRADEMARK
PRINCIPAL REGISTER**



PRODUCTS UNLIMITED, INC. (NEBRASKA
CORPORATION)
915 NORTH 20TH STREET
OMAHA, NE 68102

FIRST USE 5-1-2000; IN COMMERCE 5-1-2000.

SN 76-226,768, FILED 3-20-2001.

FOR: MATTRESS COVERS, QUILTS, COMFOR-
TERS, BED PADS, AND BED BLANKETS, IN CLASS
24 (U.S. CLS. 42 AND 50).

MIDGE BUTLER, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,819,039

Registered July 13, 2010

Int. Cl.: 20

TRADEMARK

PRINCIPAL REGISTER

MEDIWEDGE INC (FLORIDA CORPORATION)
6124 KESTRELPARK DRIVE
LITHIA, FL 33547

FOR: FOAM WEDGE, COVERED WITH A NON-SKID FABRIC, USED BETWEEN A MATTRESS AND A BOX SPRING IN ORDER TO RAISE THE HEAD OF THE MATTRESS IN ORDER TO REDUCE THE IMPACT OF NIGHT TIME ACID INDIGESTION, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 2-25-2009; IN COMMERCE 2-25-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INC", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE STYLIZED WORDS "MEDIWEDGE INC. SLEEP INCLINED FOR BETTER HEALTH". ABOVE THE STYLIZED WORDS IS AN IMAGE OF A FLOWING OUTLINE OF A STYLIZED BODY SLEEPING ON A "WEDGE".

SN 77-544,626, FILED 8-12-2008.

C. DIONNE CLYBURN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

Dreamsweet

Reg. No. 3,832,808

Registered Aug. 10, 2010

Int. Cl.: 20

TRADEMARK

PRINCIPAL REGISTER

WANGSONS INTERNATIONAL, INC. (CALIFORNIA CORPORATION)

#303

2675 SKYPARK DR.

TORRANCE, CA 90505

FOR: MEMORY FOAM PILLOWS; SLEEPING MATS; TRAVEL PILLOWS; SEAT CUSHIONS; LUMBAR SUPPORT PILLOWS; NECK-SUPPORTING PILLOWS; HEAD SUPPORTING PILLOWS; MATTRESSES; PILLOWS; MATTRESS TOPPERS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 12-18-2009; IN COMMERCE 12-18-2009.

THE MARK CONSISTS OF THE STYLIZED WORDS "DREAMSWEET". CONTOURED LINES SHAPING A PERSON LYING ON A BED WITH A COMFORTABLE PILLOW ABOVE THE STYLIZED WORDS.

SN 77-734,724, FILED 5-12-2009.

GRET'TA YAO, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 3,271,519

Registered July 31, 2007

**TRADEMARK
PRINCIPAL REGISTER**



TRACHTMAN AND COMPANY (CALIFORNIA
SOLE PROPRIETORSHIP)

P.O. BOX 5307

FULLERTON, CA 92835

FOR: MATTRESS AND MATTRESS TOPPER, IN
CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 11-15-2004; IN COMMERCE 12-15-2004.

THE COLOR(S) PURPLE, BLUE AND WHITE IS/
ARE CLAIMED AS A FEATURE OF THE MARK.

THEN ENTIRE MARK IS IN PURPLE SET
AGAINST A WHITE BACKGROUND EXCEPT FOR
THE WORDING MASTER THE ART AND SCIENCE
OF SLEEP AND THE LOWER THREE WAVY LINES
OF THE BED WHICH ARE IN BLUE. THE SLEEP-
ING CHARACTER IS LINED IN PURPLE FILLED IN
WITH WHITE CONTRAST.

SER. NO. 78-522,685, FILED 11-24-2004.

JOHN HWANG, EXAMINING ATTORNEY

Int. Cl.: 20

Prior U.S. Cl.: 32

United States Patent and Trademark Office

Reg. No. 1,286,039

Registered Jul. 17, 1984

TRADEMARK
Principal Register



by
Claude Gable

Claude Gable Co., Inc. (North Carolina corporation)
322 Fraley Rd.
High Point, N.C. 27263

For: FURNITURE—NAMELY, SLEEP SOFAS,
in CLASS 20 (U.S. Cl. 32).

First use Apr. 17, 1980; in commerce May 15,
1980.

No claim is made to the exclusive right to use the
words "Sleep Sofa", apart from the mark as shown.

The name "Claude Gable" is of a living individual
whose consent is of record.

Ser. No. 397,517, filed Sep. 30, 1982.

MARY E. HANNON, Examining Attorney

Int. Cl.: 20

Prior U.S. Cls.: 2, 13, 22, 25, 32 and 50

United States Patent and Trademark Office

Reg. No. 2,936,423

Registered Mar. 29, 2005

**TRADEMARK
PRINCIPAL REGISTER**



BUCKY PRODUCTS, INC. (WASHINGTON CORPORATION)
1200 WEST NICKERSON STREET
SEATTLE, WA 98119

FOR: PILLOWS; TRAVEL PILLOWS; BED PILLOWS; BACK PILLOWS; NECK PILLOWS WITH DETACHABLE CARRYING BAG; CUSHIONS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 6-0-2001; IN COMMERCE 6-0-2001.

OWNER OF U.S. REG. NOS. 1,828,306, 2,314,067 AND OTHERS.

THE MARK CONSISTS OF THE WORD BUCKY IN STYLIZED LOWERCASE LETTERS UNDERNEATH A DESIGN.

SER. NO. 78-392,872, FILED 3-29-2004.

INGA ERVIN, EXAMINING ATTORNEY

Int. Cls.: 10 and 20

Prior U.S. Cls.: 2, 13, 22, 25, 26, 32, 39, 44, and 50

United States Patent and Trademark Office

Reg. No. 3,142,845

Registered Sep. 12, 2006

**TRADEMARK
PRINCIPAL REGISTER**



KAYFOAM WOOLFSON (IRELAND COMPANY)
BLUEBELL INDUSTRIAL ESTATE, NAAS ROAD
DUBLIN, IRELAND 12

FOR: ORTHOPAEDIC ARTICLES, NAMELY,
PRESSURE-RELIEF PADS, CUSHIONS, MATTRESSES,
OVERLAY PADS, COVERS FOR CUSHIONS,
COVERS FOR MATTRESSES, PADS FOR MEDICAL
USE, SUPPORT PADS, CUSHIONS AND MATTRESSES
FOR MEDICAL USE, FOAM PILLOWS FOR
MEDICAL USE, ANTI-BACTERIAL PADS, PADS
AND CUSHIONS FOR MEDICAL USE, FOAM
CUSHIONS FOR MEDICAL USE, FOAM MATTRESSES
FOR MEDICAL USE, IN CLASS 10 (U.S. CLS. 26,
39 AND 44).

FIRST USE 1-0-1999; IN COMMERCE 1-0-2000.

FOR: SEAT CUSHIONS, PILLOWS, MATTRESSES
AND BEDS, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32
AND 50).

FIRST USE 1-0-1999; IN COMMERCE 1-0-2000.

OWNER OF U.S. REG. NO. 2,737,405.

SN 78-265,025, FILED 6-20-2003.

HEATHER THOMPSON, EXAMINING ATTORNEY

Int. Cls.: 20 and 24

Prior U.S. Cls.: 2, 13, 22, 25, 32, 42 and 50

United States Patent and Trademark Office

Reg. No. 3,045,535

Registered Jan. 17, 2006

**TRADEMARK
PRINCIPAL REGISTER**



OGALLALA DOWN COMFORTER COMPANY
(NEBRASKA CORPORATION)
218 PROSPECTOR DRIVE
P. O. BOX 830
OGALLALA, NE 69153

FOR: PILLOWS, IN CLASS 20 (U.S. CLS. 2, 13, 22,
25, 32 AND 50).

FIRST USE 1-4-2002; IN COMMERCE 1-4-2002.

FOR: COMFORTERS, DUVETS, MATTRESS
PADS, FEATHER BEDS, IN CLASS 24 (U.S. CLS. 42
AND 50).

FIRST USE 1-4-2002; IN COMMERCE 1-4-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "COMFORT COMPANY", APART
FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A FANCIFUL DESIGN
OF A RECLINING PERSON APPEARING ABOVE
THE WORDS OGALLALA COMFORT COMPANY.

SER. NO. 78-507,245, FILED 10-28-2004.

KELLY CHOE, EXAMINING ATTORNEY

EXHIBIT F

UNITED STATES DISTRICT COURT

for the

District of Utah

Dan Foam APS

Plaintiff

v.

Sleep Innovations, Inc.

Defendant

Civil Action No. Cancellation No. 92054201

(If the action is pending in another district, state where:

Trademark Trial and Appeal Board)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Overstock.com, Inc., ATTN: Krysta Pecharich, 6350 South 3000 East, Salt Lake City, Utah 84121

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: All customer inquiries regarding any Bodipedic product including the term "TEMPUR", "TEMPER," "TEMPUR-PEDIC," or "TEMPURPEDIC"

Place: Stites & Harbison, PLLC, ATTN: Amy Cahill 400 W. Market St., Ste. 1800 Louisville, KY 40202	Date and Time: 02/23/2012 12:00 pm
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/02/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Dan Foam APS

, who issues or requests this subpoena, are:

Amy S. Cahill, Stites & Harbison PLLC, 400 W. Market St., Ste. 1800, Louisville, Kentucky 40202; acahill@stites.com; (502) 681-0597

EXHIBIT G

February 7, 2012

VIA OVERNIGHT MAIL

Amy Sullivan Cahill
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352

Irene M. Hurtado
Associate
T. 973.848.5371
F. 973.297.3761
ihurtado@mccarter.com

Re: Dan Foam APS v. Sleep Innovations, Inc. (Cancellation No. 92054201)

Dear Ms. Cahill:

The Zucconi Idea Agency, Inc. ("ZIA") has provided us with a copy of the subpoena, dated February 3, 2012, served upon ZIA in the above-referenced proceeding (the "Subpoena"). This Firm is representing ZIA in connection with the subpoena.

On behalf of ZIA, we object to the Subpoena on the grounds that it is overly broad, unduly burdensome and seeks production of information that is not relevant to the cancellation proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In particular, the Subpoena seeks production of all documents and information relating to Sleep Innovations, Inc. ("SI") and World Sleep Products, Inc. ("WSP"). However, Petitioner is only entitled to production of those documents that relate to the mark at issue in the cancellation proceeding. ZIA will respond to the Subpoena, on or before February 17, 2012, by producing documents relating to the BODIPEDIC mark that is the subject of the cancellation proceeding.

We did not receive any notice from your office of service of the Subpoena on ZIA. In the future, should Petitioner serve any third-party subpoenas, please provide us with the notice required pursuant to 37 C.F.R. Section 2.116 and Rule 45(b)(1) of the Federal Rules of Civil Procedure.

Please contact me should you wish to discuss these matters further.

Very truly yours,



Irene M. Hurtado

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
T. 973.622.4444
F. 973.624.7070
www.mccarter.com

BOSTON

HARTFORD

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

EXHIBIT H



6350 South 3000 East
Salt Lake City, Utah 84121

801.947.3100 phone
801.944.3144 fax

Krysta Pecharich
Paralegal
801-947-4370
kpecharich@overstock.com

February 10, 2012

Via United States Mail and email to acahill@stites.com

Stites & Harbison, PLLC
Attn: Amy Cahill
400 W. Market Street
Suite 1800
Louisville, KY 40202

Re: Dan Foam APS v. Sleep Innovations, Inc.
Cancellation # 92054201

Dear Ms. Cahill:

This letter is in response to your Subpoena of February 2, 2012 regarding the above mentioned matter. Attached you will find the information requested.

If you have any questions, please feel free to contact me.

Sincerely,

Krysta Pecharich
Paralegal

EXHIBIT I

400 West Market Street
Suite 1800
Louisville, KY 40202-3352
(502) 587-3400
(502) 587-6391 Fax
www.stites.com

FEBRUARY 14, 2012

Amy S. Cahill
(502) 681-0597
(502) 779-9805 FAX
acahill@stites.com

VIA ELECTRONIC MAIL AND U.S. MAIL

(rsmith@mccarter.com; ihurtado@mccarter.com)

Robert W. Smith

Irene Hurtado

McCARTER & ENGLISH, LLP

Four Gateway Center, 100 Mulberry Street


Newark, NJ 07102

RE: Dan Foam APS v. Sleep Innovations, Inc.
Trademark Trial and Appeal Board Cancellation No. 92054201
C/M Code: DI65/42454

Dear Mr. Smith and Ms. Hurtado:

Enclosed please find a copy of a properly issued subpoena *duces tecum* and one (1) CD-ROM containing documents produced by Overstock.com, Inc. pursuant to subpoena.

Sincerely,



Amy S. Cahill

DI65:42454:869278:1:LOUISVILLE